

ARKANSAS SUPREME COURT

No. CR 06-1311

BENNY L. HULSEY
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 10, 2007

PRO SE MOTIONS FOR
APPOINTMENT OF COUNSEL AND
FOR EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF [CIRCUIT
COURT OF BENTON COUNTY, CR
2000-1178, HON. TOM J. KEITH,
JUDGE]

MOTION FOR APPOINTMENT OF
COUNSEL DENIED; MOTION FOR
EXTENSION OF TIME TO FILE
APPELLANT'S BRIEF GRANTED
(FINAL EXTENSION).

PER CURIAM

In 2001, appellant Benny L. Hulsey was found guilty by a jury of indecent exposure and first-degree sexual abuse. He was sentenced to an aggregate term of thirty years' imprisonment. The Arkansas Court of Appeals affirmed. *Hulsey v. State*, CACR 01-1342 (Ark. App. Sept. 10, 2003). Appellant subsequently filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied as an impermissible second petition. This court reversed and remanded for consideration of the merits of the petition, as it was the first petition filed following the mandate on direct appeal and was timely filed. *Hulsey v. State*, CR 04-1386 (Ark. Dec. 8, 2005) (per curiam). Following remand, the trial court entered an order denying the Rule 37.1 petition, and appellant has lodged a pro se appeal from the order in this court. Now before us are appellant's motions seeking

appointment of counsel to represent him on appeal and an extension of time to file his brief-in-chief.

As grounds for the request that counsel be appointed for this appeal, appellant states that he is unlearned in the law and mentally and emotionally unable to represent himself and that he is confined in administrative segregation which limits his access to the prison library. In the event this court declines to appoint counsel, he asks that he be granted time for his family to locate an attorney to take over the appeal.

Postconviction matters, such as petitions pursuant to Ark. R. Crim. P. 37.1 are considered civil in nature with respect to the right to counsel, and there is no absolute right to appointment of counsel in civil matters. *See Virgin v. Lockhart*, 288 Ark. 92, 702 S.W.2d 9 (1986) (per curiam). Nevertheless, we have held that if an appellant makes a substantial showing that he is entitled to relief in a postconviction appeal and that he cannot proceed without counsel, we will appoint counsel. *See Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). As the appellant here offers nothing to demonstrate that there is substantial merit to the appeal, he has not met his burden of establishing that he is entitled to appointment of counsel.

As to appellant's request that he be allowed time for his family to retain counsel, which is presumably a request to stay the appeal, the appeal has been docketed in this court for approximately six months. Appellant has had ample opportunity in that lengthy period to retain counsel if he desired to do so.

With respect to appellant's motion for extension of brief time, appellant's brief was originally due to be filed December 27, 2006. Appellant requested and was granted a seven-day extension of time, making the brief due January 3, 2007. Appellant tendered a brief after that date, and we granted his motion to file a belated brief. *Hulsey v. State*, CR 06-1311 (Ark. Mar. 1, 2007) (per curiam). Because the brief appellant had tendered did not conform to Ark. Sup. Ct. R. 4-7, he was allowed until March

15, 2007, to submit a conforming brief. Appellant tendered a brief on March 13, 2007, but it too was not in proper form. He bases the need for another extension of time to file a conforming brief on the same grounds advanced in his motion for appointment of counsel, *i.e.* mental instability and problems created by his confinement. We will afford appellant one final extension of time to submit the brief; no further extensions will be granted. The time to file the brief is extended to fourteen days from the date of this opinion.

Motion for appointment of counsel denied; motion for extension of time granted (final extension).